

EAGLE MOUNTAIN CITY
CITY COUNCIL MEETING
OCTOBER 15, 2013

TITLE:	Arrival Master Development Agreement		
FISCAL IMPACT:	Potential future reimbursements to developer for capital improvements (excess capacity)		
APPLICANT:	Scot Hazard		
GENERAL PLAN DESIGNATION Rural Residential	CURRENT ZONE Residential	ACREAGE 223 Acres	COMMUNITY Arrival

NOTICES:

None Required

REQUIRED FINDINGS:

Should be consistent with the approved Arrival Master Development Plan

**Planning
Commission Action /
Recommendation**

Vote: N/A

Prepared By:
Steve Mumford
Planning Director

NOTES/COMMENTS:

BACKGROUND:

The 223-acre property for the Arrival project was annexed into the City recently, and a master development plan was approved by the City Council on August 20, 2013. This approval grants the developer the density, land uses, and major road layout for the project. This development agreement includes details of timing of improvements and allows the developer to move forward with plat approvals and development of the project, subject to the provisions of the development agreement.

ITEMS FOR DISCUSSION:

At the discretion of the City Council, the following items may require discussion at the meeting, and possible changes to the agreement:

Park Ownership and Maintenance (*Section 4A of the MDA*). As a base density project, the developer is not required to provide improved open space or park space. This project, however, includes a 3.3-acre park. The developer has asked that the park be owned and maintained by the Arrival Home Owners' Association, and that the City not charge the HOA for the metering of water used for the park. Would it be better for the City to own the open space and have a maintenance agreement with the HOA?

Trails & Trail Easements (*Section 4B of the MDA*). The project contains 20-foot wide trail easements throughout. A six-foot wide asphalt trail will be built in that easement by the developer along with each phase of development. The developer has requested that the City maintain that trail. The question remains: who is responsible for maintenance of the remaining easement areas, especially after property owners fence off their yard up to the edge of the easement?

Canyon Wash Road (*Section 5A of the MDA*). The MDA contains the following language: *In order to mitigate additional vehicle and construction traffic on Canyon Wash Road, Developer shall stripe sections of Canyon Wash Road, in such manner as determined by the City Engineer, within 60 days of execution of this Agreement, or as soon as reasonably practicable if striping is not possible due to weather conditions.* The developer has requested that this be removed from the agreement.

Accessory Apartments (*Section 7 of the MDA*). The MDA allows for homeowners to comply with the Accessory Apartments provision of the City Code, specifically for detached buildings (allowed in the Base Density Zone). The developer wants this right vested, so that if the City Code ever changes in that respect, the lots in this project would still be allowed to have accessory apartments in outbuildings, or detached structures. We do not recommend this, but the Council can decide if that is acceptable.

Water Infrastructure & Capacity (*Section 8A of the MDA*). Prior to receiving final approval for a second phase of development (any more than the 28 lots in plat 1), the developer must provide a project water model and update the City's water master plan. This will determine when a new water tank and pump will be required. These facilities must be constructed prior to the developer receiving approval for any subdivision that requires the tank and pump station to provide water capacity or water pressure. The City may work with the developer on reimbursements for additional capacity built into these systems.

RESOLUTION NO. R- -2013

**A RESOLUTION OF EAGLE MOUNTAIN CITY, UTAH,
APPROVING THE ARRIVAL
MASTER DEVELOPMENT AGREEMENT**

PREAMBLE

The City Council of Eagle Mountain City finds that it is in the public interest to approve the Arrival Master Development Agreement as set forth more specifically in Exhibit A.

BE IT ORDAINED by the City Council of Eagle Mountain City, Utah:

1. The City Council finds that all required notices and hearings have been completed as required by law to consider and approve the proposed Master Development Agreement as set forth in Exhibit A.
2. The Arrival Master Development Agreement is hereby approved as set forth more specifically in Exhibit A.
3. This Resolution shall take effect upon its first publication or posting.

ADOPTED by the City Council of Eagle Mountain City, Utah, this 15th day of October, 2013.

EAGLE MOUNTAIN CITY, UTAH

Heather Anne Jackson, Mayor

ATTEST:

Fionnuala B. Kofoed, City Recorder

CERTIFICATION

The above resolution was adopted by the City Council of Eagle Mountain City on the 15th day of October, 2013.

Those voting aye:

Donna Burnham
Ryan Ireland
Nathan Ochsenhirt
John Painter
Richard Steinkopf

Those voting nay:

Donna Burnham
Ryan Ireland
Nathan Ochsenhirt
John Painter
Richard Steinkopf

Fionnuala B. Kofoed, City Recorder

EXHIBIT A

EAGLE MOUNTAIN CITY
MASTER DEVELOPMENT AGREEMENT
FOR THE
ARRIVAL DEVELOPMENT

This Master Development Agreement for the Arrival Development (this “**Agreement**”) is entered into between Eagle Mountain City, a municipal corporation of the State of Utah (the “**City**”) and Gregory W. Hazard, Belle Street Investments, LLC, Earl C. Hindley, Trustee, James E. Hindley, Trustee, and Ruby Jane Hindley, Trustee (collectively “**Developer**”).

This Agreement is made with reference to the following facts.

A. Developer has submitted to the City an application for a new development known as Arrival (the “**Project**”).

B. The Project consists of approximately 223 acres of the land (the “**Property**”) located North of SR73 and West of the existing North Ranch subdivision. A legal description of the Property is attached as Exhibit A.

C. The City has approved the Land Use Plan for the Project, which generally depicts the road layouts and lots for the Property. The approved Master Development Plan and Land Use Plan (“**Land Use Plan Map**”) are attached as Exhibit B.

D. The Project will be zoned for single family residential development and improved in compliance with procedures and standards in the Development Code of the City (the “**Development Code**”) and the terms of this Agreement.

E. The City and Developer wish to define the rights and responsibilities of the parties with respect to the development of the Property, vested rights, and funding of improvements on the Property, which is approved by the City in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties contained herein, the parties agree as follows:

1 Governing Standards. Unless otherwise specifically set forth herein, the Project shall be governed by the procedures, standards and requirements of the Development Code.

2. Zoning, Density and Land Use Standards. The Project will be zoned as residential in accordance with Chapter 17.25 of the Development Code. The residential zone must be a predominately residential use. The project is Base Density Residential with a minimum of 1/2 acre lot size. The project also includes the Equine Overlay Zone, which permits up to two horses on a minimum of ½ acre lot. The property is comprised of the following elements:

Total Acreage:	223.36 acres
Maximum Residential Lots:	178 lots
Density:	0.80 units/acre

3. Development Requirements. In accordance with Section 17.25.090 of the municipal code, the project is categorized as Base Density Residential. Developer is therefore not required to construct improved open space, community improvements, or entryways and monuments. Nevertheless, Developer has agreed to construct certain trail and park improvements as set forth herein.

4. Park and Trails Improvements.

A. Park Improvements. Developer shall construct an approximately 3.3 acre park (the “Park”) in the approximate location shown on the Land Use Plan Map. The design of the Park shall be determined by the Developer, but it is expected that the Park will include play structures, grass areas, picnic tables and/or play fields. The Park shall be constructed prior to issuance of more than one hundred and twenty (120) building permits in the Project. A detailed park plan showing the improvements and sprinkler system must be approved by the City prior to approval of any subdivision including the Park or adjacent to the Park. The Park shall be dedicated to the Home Owners’ Association (“HOA”) for Arrival together with the first plat which includes property adjacent to the Park and shall be maintained by the HOA. The City agrees to enter into a separate agreement with the HOA to provide water to irrigate the Park in such amounts as the City determines are reasonable and appropriate for the approved Park improvements.

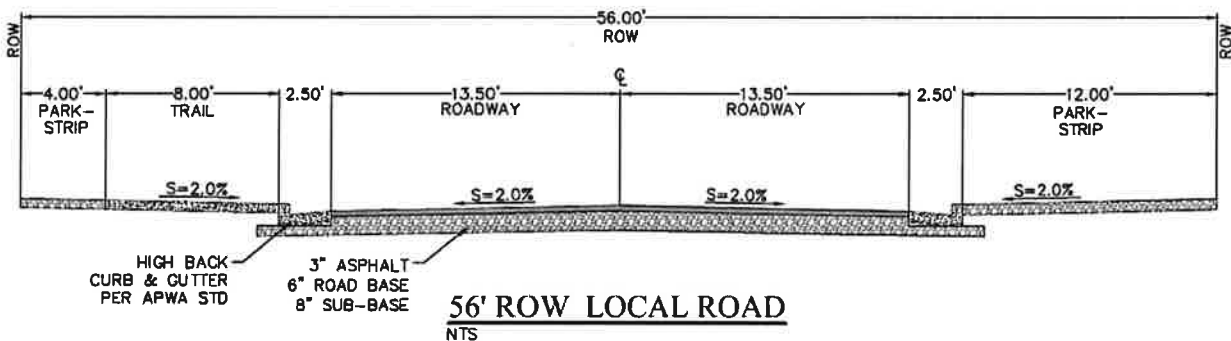
B. Trails. Trails are planned throughout the Project in the location as shown on the Land Use Plan Map. Unless otherwise agreed to by the parties, all off-street trails shall be not less than six (6) foot wide asphalt trails. The asphalt portion of all trails shall be considered public infrastructure improvements and shall be subject to the City's security and warranty requirements. The City shall be responsible for maintaining the asphalt portion of the Trails after final inspection and acceptance of the Trails and expiration of the applicable warranty term. The remaining area within the public trail easements shall be maintained by the property owner or HOA.

5. Roadway Improvements.

A. Canyon Wash Road. In order to mitigate additional vehicle and construction traffic on Canyon Wash Road, Developer shall stripe sections of Canyon Wash Road, in such manner as determined by the City Engineer, within 60 days of execution of this Agreement, or as soon as reasonably practicable if striping is not possible due to weather conditions.

B. Second Access. A second, primary access to the Project must be constructed through the Clearview Estates Development prior to final subdivision plat approval of more than thirty (30) lots in the Project.

C. Roadways. The road in the southwest corner of the project shall be a 77-foot wide minor collector from the southern border of the project to the first intersection. Unless the City and developer agree to an alternative road cross-section in the future, all other roads in the Project shall be constructed according to the following 56-foot wide local road section:



6. Transitioning and Setback Requirements. Developer agrees to comply with all transitioning requirements set forth in Title 17 of the Development Code. In addition, the eastern

border of the project is adjacent to the existing North Ranch subdivision. In order to be compatible with the North Ranch subdivision, Developer agrees to plat a minimum of one row of lots not less than 1 acre in size adjacent to the North Ranch subdivision.

7. Accessory Apartments. The City Code allows for detached accessory apartments in the base density zone, subject to specific regulations. Every lot in the Project is within the base density zone, and the City agrees to process permits for accessory apartments according to current City Code regulations. The homeowner must occupy either the home or the apartment, must provide off-street parking, the home cannot look like a duplex, and a permit must be reviewed and approved by the City prior to obtaining a building permit for the detached structure.

8. Utility Services and Infrastructure Improvements. The parties agree and acknowledge that the Developer will provide funds to construct all necessary on-site and off-site infrastructure improvements for the Project. All proposed improvements which are to be transferred to the City under the terms of this paragraph must be reviewed and approved by the City and shall be constructed in accordance with the review comments and concept approved by the City. No subdivision plat will be recorded until improvements required for that particular plat are constructed by Developer, or Developer has placed into escrow adequate funds to construct the Improvements, which the City determines, in the City's sole and absolute discretion, are necessary for the phase of the subdivision to be developed. In the event Developer constructs utilities or other infrastructure in excess of the capacity necessary to provide services to the Property, Developer may request that the City enter into a reimbursement agreement for cost of excess capacity. The City may revise and amend the Capital Facilities Plan and Impact Fee Ordinance and payment requirements to collect the amounts required to reimburse Developer for the cost of excess capacity. In addition, the following specific requirements shall apply:

A. Water Infrastructure and Capacity. Developer acknowledges that the City does not currently have capacity to provide water service to a majority of the Project and water system improvements may be necessary to provide appropriate capacity and water pressure to the Project. City and Developer anticipate that the upper pressure zone will require a new water tank and pump station to be constructed within the Project, which Developer will be required to construct prior to approval of any subdivision requiring a new tank and pump station to provide water capacity or water pressure. City shall approve the water tank design and sizing, and the water tank property and associated access and easements shall be deeded to the City free and clear of all encumbrances prior to construction of the water tank. Developer also agrees to prepare a water model for the entire Project, in a form acceptable to the City, to determine water capacity and required water infrastructure improvements to serve the Project prior to final plat

approval for the second phase of the Project, and to update the water model for each phase of the Project as required by the City. Developer further agrees to fund an update to the portions of the City's Water Master Plan that impact the Project prior to final approval for the second phase of the Project. City shall not require Developer to "upsized" the water tank and water system improvements (i.e., to construct the improvements to a size larger than required to service the Project) unless City enters into a reimbursement agreement with Developer to compensate Developer for the pro rata costs of such upsizing through the collection of impact fees or such other means acceptable to City and Developer.

B. Electric Infrastructure. Developer acknowledges that electrical capacity may be sufficient for only the first phase of the Project. Electric capacity must be evaluated for each phase of the Project and the City may withhold approval if sufficient capacity is not available.

9. Septic Tanks and Drainfields. The City acknowledges that Developer intends to utilize on-site private individual underground waste water disposal septic systems for all residential lots created on the Property. Developer shall be responsible to comply with all requirements of the City, Utah County Health Department and the State of Utah regarding the review and approve of said septic systems. Developer shall clearly indicate on all subdivision plats that lots will be serviced by septic systems, and that such systems are the sole and absolute responsibility of the property owner. County Health Department approval is required for the septic systems for each lot prior to preliminary plat approval, and is a submittal requirement of the preliminary plat application. The City does not guarantee the maximum densities if lots do not receive approval for septic systems.

10. Stormwater, Drainage and Erosion. Prior to Developer recording any final plats in the Project, the City Engineer must approve a drainage plan for the Project. Developer shall have an erosion study completed from a geotechnical engineer to determine erosion potential and any required erosion control improvements for the Tickville Gulch/Wash located along the eastern boundary of the northern half of the Project. The erosion study and recommended mitigation will be required prior to approval of any final subdivision plats that are located adjacent to the Tickville Wash. Developer shall improve all detention and retention areas with gravel mulch or some other form of low maintenance landscaping and materials acceptable to and approved by the City.

11. Dedication of Facilities. Except as provided in a reimbursement agreement which may be entered between the City and the Developer, the Developer agrees to dedicate and donate

free and clear of all encumbrances to the City all required spaces for the location of City owned utilities, utility facilities and improvements for the construction and use of utilities, roads, and other public ways.

12. Water Rights. Developer shall comply with the City's Development Code, as amended, related to providing water or water rights to the City for the Project, including the park area.

13. Withholding Approval Upon Default. The parties agree that the City shall not approve or record any subdivision in the Project if the Developer is in default on any obligation to the City which requires the construction of roads and completion of public improvements or other utility infrastructure to serve the Project. In addition, the City may withhold approval of building permits to construct any building or structure within the Project if the Developer is not current with all obligations to the City at the time of application for the development approval and/or has not completed all required improvements within the time to complete required improvements approved by the City Council.

14. Reserved Powers. The parties agree that the City reserves certain legislative powers to amend its Development Code to apply standards for development and construction generally applicable throughout the City. It is the intent of the parties to vest the Developer with the specific land uses and development density defined specifically on the Land Use Map (Exhibit B) and to vest Developer with the Tier I requirements set forth in Paragraph 3 of this Agreement. Developer shall be required to comply with all other generally applicable standards, conditions and requirements enacted by the City to protect the safety, health and welfare of the current and future inhabitants of the City.

15. Impact Fees. Developer agrees to pay all impact fees when due as set forth more specifically in the City Impact Fee Ordinance as it may be amended from time to time.

16. Annual Review of Compliance. The parties agree that the City may conduct an annual review of compliance by the Developer within the terms of this Agreement. It shall be an event of default if the Developer has failed to fund roads, parks or other utility infrastructure facilities required by this Agreement or by the City Development Standards, or if work remains incomplete on public infrastructure facilities without having received an adequate extension of time for the completion of such facilities from the City. It shall be an event of default if the Developer fails to deposit adequate collateral for the improvements required by this Agreement or fails to cure any defect discovered by the City upon inspection of any infrastructure utility facilities.

17. Default Notice to Developer. Upon the occurrence of an event of default by Developer, the City shall provide not less than fifteen (15) days notice to the Developer of a meeting of the City Council where the Developer's default shall be heard and reviewed by the

City Council. The Developer shall be entitled to attend the hearing and comment on the evidence presented concerning the default. Upon a finding by the City Council that the Developer is in default, the City Council may order that work in the Project be terminated until the default is cured or may issue such further directions to City staff and to the Developer as deemed appropriate under the circumstances.

18. Default Notice to City. Upon the occurrence of any default by City, the Developer may request in a hearing before the City Council where the City's default shall be heard and reviewed by the City Council. City shall schedule such hearing within thirty (30) days of written request of Developer.

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors, heirs and assigns of the parties hereto, and to any entities resulting from the reorganization, consolidation, or merger of any party hereto.

20. Integration. This Agreement constitutes the entire understanding and agreement between the parties, and supersedes any previous agreement, representation, or understanding between the parties relating to the subject matter hereof; provided however, that the Development Code of the City shall govern the procedures and standards for approval of each subdivision and public improvement.

21. Not Severable. The provisions of this Agreement are not severable, and should any provision hereof be deemed void, unenforceable or invalid, such provision shall affect the remainder of this Agreement, and shall provide grounds for dissolution of the Agreement at the option of the parties in the exclusive discretion of each of them.

22. Waiver. Any waiver by any party hereto of any breach of any kind or character what so ever by the other party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement on the part of the other party.

23. No Modification. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

24. Governing Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Utah.

25. Costs of Enforcement. In the event of default on the part of any party to this Agreement, that party shall be liable for all costs and expenses incurred by the other parties enforcing the provisions of this Agreement, whether or not legal action is instituted.

26. Agreement to Run With the Land. This Agreement shall be deemed to run with

the land and shall be binding on Developer and all successors and assigns of any of the foregoing. Developer agrees to execute a Notice of this Agreement to be recorded against the Property in a form acceptable to the City.

Dated this _____ day of _____, 2013.

DEVELOPER

Belle Street Investments, LLC

By: _____

Print Name: _____

Title: _____

Gregory W. Hazard

Earl C. Hindley, Trustee

James E. Hindley, Trustee

Ruby Jane Hindley, Trustee

Dated this _____ day of _____, 2013.

ATTEST:

EAGLE MOUNTAIN CITY

Fionnuala Kofoed, City Recorder

Heather Jackson, Mayor

Exhibit A

[Legal Description]

Parcel 1

Commencing at the Northwest Corner of Section 24, Township 5 South, Range 2 West, Salt Lake Base and Meridian; thence South $89^{\circ}21'24''$ East 2671.33 feet; thence South $00^{\circ}45'19''$ West 110.236 feet; thence South $74^{\circ}43'48''$ West 150.442 feet; thence along the arc of a 5804.578 foot radius curve to the left 1225.839 feet (chord bears South $67^{\circ}19'12''$ West 1223.562 feet); thence South $62^{\circ}37'48''$ West 1595.654 feet; thence North $00^{\circ}53'06''$ East 1385.37 feet to the point of beginning.

Parcel 2

The South half of the Southwest Quarter of Section 13, Township 5 South, Range 2 West of the Salt Lake Base and Meridian.

Parcel 3

The Southeast Quarter of Section 14, Township 5 South, Range 2 West of the Salt Lake Base and Meridian.

Combined Description

Beginning at the South Quarter Corner of Section 13, Township 5 South, Range 2 West, Salt Lake Base and Meridian; thence South $00^{\circ}45'19''$ West along quarter section line 96.50 feet; thence along the northerly right-of-way line of State Road 73 the following three courses and distances: 1) South $74^{\circ}43'49''$ West 43.09 feet, 2) along the arc of a 5097 foot radius curve to the left 1111.21 feet through a central angle of $12^{\circ}29'28''$ (chord bears South $68^{\circ}29'04''$ West a distance of 1109.01 feet), and 3) South $62^{\circ}14'20''$ West 1828.47 feet; thence North $00^{\circ}52'57''$ East along section line 1396.22 feet to the Southwest corner of Section 13; thence along the Southeast Quarter of Section 14, Township 5 South, Range 2 West, Salt Lake Base and Meridian the following four courses and distances: 1) North $89^{\circ}12'30''$ West 2685.28 feet, 2) North $01^{\circ}04'12''$ East 2643.25 feet, 3) South $89^{\circ}02'22''$ East 2687.84 feet, and 4) South $01^{\circ}07'35''$ West 1317.68 feet; thence along the South Half of the Southwest Quarter of Section 13 the following two courses and distances: 1) North $89^{\circ}41'32''$ East 2649.79 feet, and 2) South $00^{\circ}11'34''$ West 1361.47 feet to the point of beginning.

Basis of Bearing = North $00^{\circ}11'34''$ East along Quarter Section line from the South Quarter Corner of Section 13, Township 5 South, Range 2 West, Salt Lake Base and Meridian to the North Quarter Corner of Section 13.

Exhibit B

[Land Use Plan Map]

